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AUTHOR Kussrow, Paul G.
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ABSTRACT

This paper addresses the topic of tenure in community college education and the suspension of tenure in most collective bargaining agreements. It proposes a five-step process to be included within any just cause (incompetence or misconduct) and termination sections of collective bargaining language. Professors who work under collective bargaining agreements have subjugated themselves to contract clauses which, in essence, suspend tenure at the discretion of any designated administrator. No written notice of termination has to be given, no statement as to the reasons for the actions has to be employed, there is no opportunity to engage established grievance procedures, no chance to be confronted by one's accusers, and no neutral arbitrator is assigned. This leaves the employee with only two courses of appeal: file a grievance after the fact, which typically will be reviewed by the same people who authorized the termination, or start a legal action against the institution. Those without collective bargaining agreements have even less protection. Tenure, in its present precarious state, keeps the production of scholarly work at the maximum while offering a minimum of actual incentives. (JA)

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THE MYTH OF TENURE

Why is there so much discussion in and out of academe about the benefits and detriments of tenure in community college education, when in reality it doesn't exist? Professors who work under a collective bargaining agreement have subjugated themselves to contract clauses which in essence suspends tenure at the discretion of any designated administrator. Those without collective bargaining agreement have even less protection, as if that were possible. In today's academic world tenure is little more than a myth clung to by faculty who want to be immersed in the discipline they love.

Let us explore how tenure is suspended in most collective bargaining agreements. When one reads the clauses or articles relating to tenure and permanent status there is a lot of verbiage as to who is eligible, how tenure decisions are made, procedures that need to be employed and how permanent status can be obtained. But look at the clause(s) towards the back of this section which have to do with termination and layoff. The print size is the same but these short statements in essence negates the many earlier pages of narrative. There is inevitably a statement about "just cause" or "disciplinary action." Just cause being later defined as to having to do with "incompetence" or "misconduct." Here is where tenure is quietly, but efficiently, eliminated. This contract language opens the door to "termination" when the president, or their representative i.e. any designated administrator, determines at there singular discretion that the safely or welfare of someone (possibly never to be named) or the interest of the college is jeopardized by the

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continued employment of the tenured employee. No written notice of termination has to be given, no statement as to the reasons for the actions to be employed, no opportunity to engage established grievance procedures, no chance to be confronted by one's accusers, and no neutral arbitrator is assigned. Any faculty member can be terminated without cause, simply at the discretion of the assigned administrator, and with no pay and no benefits. So much for due process and equal protection under the law of the land. This leaves the employee with only two courses of appeal. The first being to file a grievance after the fact, which typically for the first two lengthy steps will be reviewed by the same people who fired you, or secondly to start an expensive legal action against an institution with unlimited resources. Neither of these choices not are all that appealing to most faculty members, and the typical administration knows it.

Before reviewing the lack of due process leading up to the tenure employee being confounded at the proverbial face-to-face meeting, where the faculty member is asked to respond to non-formal charges and to professionally execute themselves by voluntarily resigning, let us try to understand why someone would voluntarily resign if they are not guilty ?

To answer that question one has to examine the process commonly employed in securing proof of incompetence or misconduct. It usually begins by a verbal statement by an administrator that the faculty member, the accused, are been put on paid leave. At this time they will probably not receive anything in writing as to why they are on leave simply because the "fact finding" probe, some would call it the witch hunt, is just beginning. At first the faculty member feels this isn't bad because they are in essence getting paid for

doing nothing. Reality soon sets in when they realize this paid leave has put their colleagues and students in jeopardy because of their inaccessibility. After all someone has to pick up the load and it can't all be done by adjunct faculty members. Along with the leave comes restricted, or no, access to one's office, computer programs, one's professional library, on-going research files, travel money, but to name a few repercussions. Also it doesn't help one's professional reputation if you are locked out of your office and your hard copy and computer files are stripped of any and all information. The word soon gets out and the normal professional dialogues, invitations, social intercourse with professional associates and associations waivers. One becomes a persona non grata. As the leave extends into weeks, months and even semesters all normal contact is severed. For all intents and purposes, since the accused is no longer doing their duties and one's colleagues and the administration are, an extended leave results in the assumption the employee must be guilty of something. It doesn't matter that they haven't as yet been officially accused of anything.

Soon people are thinking, if not actually saying, that the accused tenured employee's absence proves guilt. Well doesn't it? Surely the administration must have some case or do they? Request by the accused for the opportunity to be confronted by his or her accusers, a written copy of your misdeeds or even a chance to offer proof of your innocence are rebuffed since "the matter is under investigation." You wait! The longer you wait the more one's credibility with your students, colleagues and professional network is damaged. The denial stage sets in where you can't believe this is happening in an institution of higher education in a country where supposedly all people have

inalienable rights assured by the noblest experiment in freedom in human history, yet it is! Soon denial turns to anger which helps one get to the acceptance stage and the realization that there are no longer any hopes of restoring the type of working relationship that you really wanted with this institution. Remember, to date the employee hasn't been accused of anything "officially." The cashing in of professional favors to get an audience with your accusers, use of attorney letters and appeals by the collective bargaining agents are all rebuffed for "the matter is still under investigation." There will eventually come a time when you do get a chance to hear what the president's representative thinks you have done. Be assured in most cases the president knows what is going on but does not want to see you for they might be called upon to appear in court at a latter time if they had actually talked to you about the incident. So much for the open door policy. Remember by now the designate administrator has fielded your phone calls, your faculty representative's request, your certified attorney's letter and they have invested, in their mind, a lot time into your problem. In this author's opinion these administrative representatives, irrespective of their personal beliefs if you are guilty or if they have enough evidence to terminate you, will ask for your resignation. And many tenured faculty do just that since they realize that only by the grace and forgiveness of God would they ever be able to regain the professional composure and relationship they enjoyed prior this "investigation" beginning. Not surprisingly many faculty resign for a promised letter of recommendation and/or the right to finish the academic year while feverishly sending out letters of intent to any opening this side of the planet Mars. Under such stress they trend to forget that the first place the next search committee members, or their

administrators, will call is the potential employee's current institution. More than likely that same administrator who is asked you to resign will field the call. So much for the benefits of letters of recommendation.

Not for one moment would this author suggest that there are not faculty who are incompetent or should not be fired for misconduct. Indeed there are more than I want to admit to but there are just as many administrators who suffer with similar disorders. Unfortunately they are in a position to "terminate" faculty at their discretion. It's something akin to getting off the train at a concentration camp and some low level administrator telling you to go to the right (employed) or to the left (terminated) dependent on their "professional" perception of how you look to them. History has always shown that power corrupts and that absolute power corrupts absolutely. Any collective bargaining contract or agreement that allows for a catch all phrase such as "misconduct or incompetence" without ensuring the highest ethical, and detailed, standards of due process and equal protection under the law invites abuse.

This writer would go so far as to say administrators need to be held personally liable for the misuses of their powers. Just as war criminals committing human atrocities are not protected by their sovereignty of their state (institution) or by claiming that they were just doing their duty as a soldier while committing climes against humanity so too must administrators be removed from the protection of the state with its cadre of attorneys and their bottomless legal war fund. If found guilty of terminating without cause or violating professional due process they need to be help personally accountable and financially liable. For destroying a faculty's professional career resulting in them

uprooting their family, wasting their merger savings in legal fees and moving expenses, while their professional reputations are discredited is, in this author's opinion, a crime.

This tenured faculty member would suggest some language and steps that should be included within any just cause (incompetence or misconduct) and termination sections of collective bargaining language. They would be as follows. Step 1: The employee is to receive a written notice of proposed action within ten (10) working days of any reported incident or act or omission given rise thereto. Step 2: Written evidence of any charges by the administration must be presented within twenty (20) working days of the incident to a three member panel consisting of the college president or his/her representative, the faculty chapter president or their representative and one mutually agreed to senior professor from that faculty member's department. The employee is to receive a certified mail, return receipt copy of any charges and proposed action. Step 3: The college will make available to the panel within twenty working day of the incident, and to the accused, a copy of all identifiable documents and a listing of all individuals interviewed that are relevant to this action. Step 4: The three member panel will meet to determine the merits of the incident, including hearing of witnesses, and propose a resolution of the matter no later than thirty (30) working days following receipt of the written notice of proposed action. They will send a copy of their decision to all parties involved within five (5) additional working days. Step 5: If any of the three parties involved (employee, administration or chapter/union) disagrees with the panel's ruling they may follow normal arbitration procedures as established by the American Arbitration Association and/or their respective collective bargaining agreement language.

Admittedly this proposed language would have to be modified to fit situational needs but it does propose a more equitable resolution to potential severe disciplinary action brought on by just cause through misconduct and incompetence. It provides an expeditious response, i.e. forth-five working days or approximately 60 calender days to the resolution of any incident. Paid leaves would not drag into months where the college is expecting other faculty members to pick up load requirements while the accused languishes in absenteeism. Additionally it asks the administration to show written proof of any charges in an expeditious manner. No longer can the accusers point to the accused, because of their own lack of initiative, or complain to their superiors that this incident is taking way too long and that they want some sort of disciplinary action or termination because of all the time they have invested in the case. Third it says to all parties lets stop talking about people's perceptions and look at the hard evidence. If there is no evidence such as written grievances filed by students, colleages, or superiors then why even bring this matter to the panel for review. The forth and obvious advantage of the use of a panel is it takes the decision away from the president or their representative and places the burden squarely on a three person panel. After all we do believe in shared governance don't we? The panel should be able to determine if the employee's actions are truly adversely affecting the functioning of the college and what, if any, disciplinary action should be taken. This process also provides more defensible due process position for all involved if the decision is appealed.

Myles Brand, president of Indiana University, wrote in *The Chronicle of Higher Education's* Point of View (April 2, 1999), "The job security provided by tenure is a

suitable incentive for those who embark upon, and make it though, the rigorous process." I agree it is a "rigorous process" but not that holds any type of "job security" in today's academic world when any president's designee can terminate any faculty for just cause just because they feel like it.

A bigger question is why do colleges bother with all the time and contract language, meetings, and evaluations required for tenure? If you think about tenure, in its present precarious state, it can make perfect sense for it is a process of awarding a non entity–a myth. Tenure keeps the production of scholarly work (publications, grants, credit hour production) at the maximum while offering a minimum of actual incentives. It's the perfect stimulus-response scenario where you convince a lower life form that if they do this (jump through the tenure hoops) they get that (tenure). The faculty does whatever it takes to get tenure, while most administrators are "extended" the privileges without fulfilling any of the requirement. Unfortunately many faculty never realize, until it is too late, that their elected collective bargaining agent has negotiated away any meaningful security under the guise of establishing an amicable system of governance.

So what is a concerned professional faculty member to do? In the book of Ecclesiastes 5:18 the writer, possibly Solomon credited as the smartest man who ever lived, states, "Then I realized that it is good and proper for a man to eat and drink, and to find satisfaction in his toilsome labor under the sun during the few days of life God has given him–for this is his lot." It is not a bad lot for as President Brand so eloquently put it, "Being a faculty member is not a job, it's a life." That life allows one to learn and to share the excitement of that learning during the few days of our professional existence.

And if the risk has been heightened because of the lack of moral integrity on the part of both sides of the elected bargaining agreement one must realize that fact while continually working towards true due processes language. Perhaps by doing so tenure can once again regain its rightful place in academic circles.